

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BRANDON CALLIER

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Plaintiff,

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v.

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Case No. EP-21-CV-0214-FM

SUNSHINE CONSULTATION
SERVICES, LLC a Florida limited
liability company d/b/a
SPECIALIZED CONSUMER
STRATEGIES, LISA J. PALMER
a/k/a LISA PALMER, and LANCE
L PALMER a/k/a LANCE PALMER

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Defendants.

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LISA PALMER'S ORIGINAL ANSWER TO
PLAINTIFFS FIRST AMENDED COMPLAINT

NOW COMES, Lisa Palmer (collectively “Defendant” or “Mrs. Palmer”), by and through its/their undersigned counsel, and hereby files this Answer to Plaintiff’s First Amended Complaint, and would respectfully show the Court as follows:

RESPONSES TO NUMBERED PARAGRAPHS

PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph one (1) of the First Amended Complaint and, therefore, such averments are denied.
2. Defendant admits the averments contained in Paragraph two (2).
3. Defendant admits the averments contained in Paragraph three (3).

4. Defendant admits the averments contained in Paragraph four (4).

JURISDICTION AND VENUE

5. The averments in paragraph five (5) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averment and demands strict proof thereof.

6. The averments in paragraph six (6) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averment and demands strict proof thereof.

7. The averments in paragraph seven (7) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averment and demands strict proof thereof.

8. The averments in paragraph eight (8) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averment and demands strict proof thereof.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. § 227

9. The averments in paragraph nine (9) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

10. The averments in paragraph ten (10) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

11. The averments in paragraph eleven (11) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

12. The averments in paragraph twelve (12) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

13. The averments in paragraph thirteen (13) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

14. The averments in paragraph fourteen (14) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

15. The averments in paragraph fifteen (15) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

16. The averments in paragraph sixteen (16) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

17. The averments in paragraph seventeen (17) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

18. The averments in paragraph eighteen (18) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

19. The averments in paragraph nineteen (19) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

20. The averments in paragraph twenty (20) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

21. The averments in paragraph twenty-one (21) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

THE TEXAS BUSINESS AND COMMERCE CODE § 305.053

22. The averments in paragraph twenty-two (22) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

23. The averments in paragraph twenty-three (23) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

TEXAS BUSINESS AND COMMERCE CODE § 302.101

24. The averments in paragraph twenty-four (24) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

25. The averments in paragraph twenty-five (25) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

26. The averments in paragraph twenty-six (26) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

FACTUAL ALLEGATIONS

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph twenty-seven (27) of the First Amended Complaint and, therefore, such averments are denied.

28. Defendant denies the averments in paragraph twenty-nine (28) of the First Amended Complaint and demands strict proof thereof.

29. Defendant denies the averments in paragraph twenty-nine (29) of the First Amended Complaint and demands strict proof thereof.

30. Defendant denies the averments in paragraph thirty (30) of the First Amended Complaint and demands strict proof thereof.

31. Defendant denies the averments in paragraph thirty-one (31) of the First Amended Complaint and demands strict proof thereof.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph thirty-two (32) of the First Amended Complaint and, therefore, such averments are denied.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph thirty-three (33) of the First Amended Complaint and, therefore, such averments are denied.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph thirty-four (34) of the First Amended Complaint and, therefore, such averments are denied.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph thirty-five (35) of the First Amended Complaint and, therefore, such averments are denied.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph thirty-six (36) of the First Amended Complaint and, therefore, such averments are denied.

37. Defendant denies the averments in paragraph thirty-seven (37) of the First Amended Complaint and demands strict proof thereof.

38. Defendant denies the averments in paragraph thirty-eight (38) of the First Amended Complaint and demands strict proof thereof.

39. Defendant denies the averments in paragraph thirty-nine (39) of the First Amended Complaint and demands strict proof thereof.

40. Defendant denies the averments in paragraph forty (40) of the First Amended Complaint and demands strict proof thereof.

41. Defendant denies the averments in paragraph forty-one (41) of the First Amended Complaint and demands strict proof thereof.

42. Defendant denies the averments in paragraph forty-two (42) of the First Amended Complaint and demands strict proof thereof.

43. Defendant denies the averments in paragraph forty-three (43) of the First Amended Complaint and demands strict proof thereof.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph forty-four (44) of the First Amended Complaint and, therefore, such averments are denied.

45. Defendant denies the averments in paragraph forty-five (45) of the First Amended Complaint and demands strict proof thereof.

46. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph forty-six (46) of the First Amended Complaint and, therefore, such averments are denied.

47. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph forty-seven (47) of the First Amended Complaint and, therefore, such averments are denied.

48. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph forty-eight (48) of the First Amended Complaint and, therefore, such averments are denied.

49. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph forty-nine (49) of the First Amended Complaint and, therefore, such averments are denied.

50. Defendant denies the averments in paragraph fifty (50) of the First Amended Complaint and demands strict proof thereof.

51. Defendant denies the averments in paragraph fifty-one (51) of the First Amended Complaint and demands strict proof thereof.

52. Defendant denies the averments in paragraph fifty-two (52) of the First Amended Complaint and demands strict proof thereof.

53. Defendant denies the averments in paragraph fifty-three (53) of the First Amended Complaint and demands strict proof thereof.

54. Defendant denies the averments in paragraph fifty-four (54) of the First Amended Complaint and demands strict proof thereof.

55. Defendant denies the averments in paragraph fifty-five (55) of the First Amended Complaint and demands strict proof thereof.

56. Defendant denies the averments in paragraph fifty-six (56) of the First Amended Complaint and demands strict proof thereof.

57. Defendant denies the averments in paragraph fifty-seven (57) of the First Amended Complaint and demands strict proof thereof.

58. Defendant denies the averments in paragraph fifty-eight (58) of the First Amended Complaint and demands strict proof thereof.

59. Defendant denies the averments in paragraph fifty-nine (59) of the First Amended Complaint and demands strict proof thereof.

60. Defendant denies the averments in paragraph sixty (60) of the First Amended Complaint and demands strict proof thereof.

61. Defendant denies the averments in paragraph sixty-one (61) of the First Amended Complaint and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph sixty-two (62) of the First Amended Complaint and, therefore, such averments are denied.

**THE SELLERS SHOULD BE HELD LIABLE TO UPHOLD THE DETERRENT
EFFECT AND PURPOSE THE TCPA**

63. The averments in paragraph sixty-three (63) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

**INJURY, HARM, DAMAGES, and ACTUAL DAMAGES
AS A RESULT OF THE CALLS**

64. Defendant denies the averments in paragraph sixty-four (64) of the First Amended Complaint and demands strict proof thereof.

65. Defendant denies the averments in paragraph sixty-five (65) of the First Amended Complaint and demands strict proof thereof.

66. Defendant denies the averments in paragraph sixty-six (66) of the First Amended Complaint and demands strict proof thereof.

67. Defendant denies the averments in paragraph sixty-seven (67) of the First Amended Complaint and demands strict proof thereof.

68. Defendant denies the averments in paragraph sixty-eight (68) of the First Amended Complaint and demands strict proof thereof.

The Plaintiff's cell phone is a residential number

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph sixty-nine (69) of the First Amended Complaint and, therefore, such averments are denied.

Violations of the Texas Business and Commerce Code 305.053

70. Defendant denies the averments in paragraph seventy (70) of the First Amended Complaint and demands strict proof thereof.

71. Defendant denies the averments in paragraph seventy-one (71) of the First Amended Complaint and demands strict proof thereof.

FIRST CLAIM FOR RELIEF

(Non-Emergency Robocalls to Cellular Telephones, 47 U.S.C. § 227(b)(1)(A))

(Against all Defendants)+

1. The averments in paragraph one (1) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

2. Defendant denies the averments in paragraph two (2) of the First Amended Complaint and demands strict proof thereof.

3. Defendant denies the averments in paragraph three (3) of the First Amended Complaint and demands strict proof thereof.

4. Defendant denies the averments in paragraph four (4) of the First Amended Complaint and demands strict proof thereof.

5. Defendant denies the averments in paragraph five (5) of the First Amended Complaint and demands strict proof thereof.

SECOND CLAIM FOR RELIEF

(Telemarketing Without Mandated Safeguards, 47 C.F.R. § 64.1200(d))

(Against All Defendants)

6. The averments in paragraph six (6) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

7. Defendant denies the averments in paragraph seven (7) of the First Amended Complaint and demands strict proof thereof.

8. Defendant denies the averments in paragraph eight (8) of the First Amended Complaint and demands strict proof thereof.

9. Defendant denies the averments in paragraph nine (9) of the First Amended Complaint and demands strict proof thereof.

10. Defendant denies the averments in paragraph ten (10) of the First Amended Complaint and demands strict proof thereof.

THIRD CLAIM FOR RELIEF

(Violations of The Texas Business and Commerce Code 305.053)

(Against All Defendants)

11. The averments in paragraph eleven (11) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

12. Defendant denies the averments in paragraph twelve (12) of the First Amended Complaint and demands strict proof thereof.

13. Defendant denies the averments in paragraph thirteen (13) of the First Amended Complaint and demands strict proof thereof.

14. Defendant denies the averments in paragraph fourteen (14) of the First Amended Complaint and demands strict proof thereof.

FOURTH CLAIM FOR RELIEF

(Violation of The Texas Business and Commerce Code 302.101)

(Against All Defendants)

15. The averments in paragraph fifteen (15) of the First Amended Complaint are legal arguments and conclusions of law, to which no response is required. To the extent a response is required, Defendant denies such averments and demands strict proof thereof.

16. Defendant denies the averments in paragraph sixteen (16) of the First Amended Complaint and demands strict proof thereof.

17. Defendant denies the averments in paragraph seventeen (17) of the First Amended Complaint and demands strict proof thereof.

18. Defendant denies the averments in paragraph eighteen (18) of the First Amended Complaint and demands strict proof thereof.

V. PRAYER FOR RELIEF

1. Defendant denies any and all liability as alleged in Plaintiff's First Amended Complaint and further denies that Plaintiffs are entitled to the relief requested in in their First Amended Complaint, or any other relief whatsoever from this Defendant.

RESERVATION OF RIGHTS

1. Defendant reserves its right to amend and to assert any and all affirmative defenses, counterclaims, cross-claims, or third-party claims that become known to her during the course of discovery.

GENERAL DENIAL AND NON-WAIVER

2. Each and every allegation in the First Amended Complaint not specifically admitted is denied, and the failure to deny a specific allegation, or assert a specific defense, shall not be deemed to be an admission of an allegation, or a waiver of a defense.

WHEREFORE, having fully answered, Defendant demands that Plaintiffs' First Amended Complaint be dismissed with prejudice, with costs and attorneys' fees awarded to Defendant, and for such other, further and different relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Brandon Smith
Brandon Smith
Texas State Bar No. 24075919
bsmith@smithdallaslaw.com
Attorney For Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing served upon the following counsel and *pro se* parties via the method reflected below, on this the 2nd day of April, 2022.

Brandon Callier
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Plaintiff, *pro se*

/s/Brandon Smith
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Attorney for Defendants